

## **EXHIBIT D**

1

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11  
4 CORAM HEALTHCARE CORP:  
and CORAM, INC. :  
5 : Case NO. 00-3299  
Debtors :

Pretrial examination of HON. ARLIN ADAMS,  
held in the offices of Schnader, Harrison  
Segal & Lewis, 1600 Market Street,  
Philadelphia, PA 19103, commencing at  
9:35 a.m., on the above date, before Mickey  
Dinter, Registered Professional Reporter  
and Commissioner of Deeds for the  
Commonwealth of Pennsylvania.

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14

Also Present: Donald J. Liebentritt,  
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1  
2       between/among counsel that the reading,  
3       signing, sealing, filing and  
4       certification are waived; and that all  
5       objections, except as to the form of the  
6       question are reserved until the time of  
7       trial.)

**8 (EXAMINATION)**

12 BY MR. LEVY:

13           Q. I'm going to address you today as  
14       Mr. Adams rather than Judge Adams. That is  
15       not in any way to be disrespectful over  
16       your distinguished career.

17 A. Fine.

18 (Trustee-1, the Opinion of  
19 Judge Walrath, marked for  
20 identification.)

21 BY MR. LEVY:

22 Q. I have asked the court reporter to  
23 mark as Trustee Exhibit 1, the opinion of  
24 Judge Walrath dated December 21st, 2001.

1 and I have three additional copies. I'm  
2 afraid that's all I have. We are going to  
3 have to ask you to share them.

4 (Trustee-2, a Motion of the  
5 Chapter 11 Trustee for Authorization to  
6 Enter into Termination and Employment  
7 Extension Agreement with Daniel D.  
8 Crowley, marked for identification.)

9

10 BY MR. LEVY:

11 Q. I have asked the court reporter also  
12 to mark as Trustee Exhibit Number 2, the  
13 motion of the Chapter 11 Trustee for  
14 Termination and Employment Extension  
15 Agreement with Daniel Crowley and here,  
16 again, we have three copies.

17 (Trustee-3, a Response of  
18 Chapter 11 Trustee in Opposition to  
19 Equity Committee's Motion for an Order  
20 Terminating Daniel Crowley Employment,  
21 marked for identification.)

22 BY MR. LEVY:

23 Q. I'm going to ask the court reporter  
24 now to mark as Trustee Exhibit Number 3,

1 the response of Chapter 11 Trustee in  
2 Opposition to the Equity Committee's Motion  
3 for an Order Terminating Daniel Crowley's  
4 Employment.

5 I wonder if, in the interest  
6 of saving time, we could agree that any  
7 objection by any one of you would stand as  
8 the objection for all of you?

9 MR. KIPNES: That's fine.

10 MR. LEVY: Thank you.

11 BY MR. LEVY:

12 Q. Mr. Adams, you were appointed as  
13 trustee in this case on about March 7 of  
14 this year, is that correct?

15 A. Correct.

16 MR. KIPNES: March 7 of last  
17 year.

18 BY MR. LEVY:

19 Q. Last year, 2002. Shortly after  
20 being appointed as trustee, you reviewed in  
21 some detail the opinion of Judge Walrath  
22 which we have marked as Trustee Exhibit  
23 Number 1, is that correct?

24 A. Correct.

1           Q. And am I also correct that shortly  
2        after that, you made efforts to have the  
3        noteholders or one of them withdraw a  
4        Notice of Appeal FROM Judge Walrath's  
5        opinion?

6           A. I did not. I made no such effort.

7           Q. Do you know whether anyone made such  
8        effort on your behalf?

9           A. Could easily be. I did not talk to  
10      them.

11          Q. Have you ever asked Mr. Bressler  
12      whether he made such efforts on your  
13      behalf?

14          A. I don't think I asked, no.

15          Q. Did you have a discussion with the  
16      debtors' counsel immediately or shortly  
17      after your appointment in which you  
18      discussed the possibility of their not  
19      filing an appeal from Judge Walrath's  
20      Order?

21          A. I have no recollection.

22          Q. Again, do you know whether  
23      Mr. Bressler or any other attorney on your  
24      behalf did that?

1           A. Could easily be. I don't know it of  
2 my own knowledge. He may have come in and  
3 said they are not going to proceed with an  
4 appeal or something like that, but I have  
5 not discussed it.

6           Q. You never expressed a view on  
7 whether they should or should not appeal?

8           A. No.

9           Q. Now, turning to Exhibit 2 which is  
10 your motion, particularly to paragraph 16  
11 which you will find on page 6.

12          A. Got it.

13         \* Q. First, let me ask you this: Did you  
14 read this Motion, Exhibit 2, before it was  
15 filed?

16          A. I did.

17          Q. Did you approve of everything that  
18 is in it?

19          A. Well, I don't know what you mean by  
20 everything. I approved of the motion.

21          Q. Did you find anything -- fine. You  
22 notice that in paragraph 16 it says, I'm  
23 reading the second sentence now, "The  
24 Court's findings regarding Crowley's

1 relationship with Cererus, as well as his  
2 failure to timely make complete disclosure  
3 of the relationship to the CHC board of  
4 directors, raised a substantial question  
5 for the Trustee as to whether Crowley  
6 should be retained."

7 A. I see it, yes.

8 Q. My first question, sir, is which of  
9 the Court's findings were being referred to  
10 in that paragraph?

11 A. I couldn't tell you. If you are  
12 talking about a number, I can't tell you  
13 that.

14 Q. Can you recall anything in the  
15 Court's findings that raised a substantial  
16 question as to whether Crowley should be  
17 retained?

18 A. Well, I don't remember the Court's  
19 finding on a word-to-word basis. That was  
20 my impression.

21 Q. Can you, as we sit here today,  
22 without asking you on a word-to-word basis,  
23 tell me your understanding of any one of  
24 the Court's findings that raised a

1 substantial question in your mind?

2 A. The fact that Mr. Crowley had a  
3 compensatory relationship with Cerberus  
4 that had not been disclosed.

5 Q. Was it your understanding, sir, that  
6 it was the fact that if it had not been  
7 disclosed was what raised a substantial  
8 question or was it the fact simply that  
9 there is a compensatory relationship?

10 A. My impression was a combination of  
11 the two factors.

12 Q. And it's your understanding then  
13 that the compensatory relationship standing  
14 alone would not have been one of the things  
15 that raised a substantial question of you,  
16 is that right?

17 MR. KIPNES: Objection to  
18 the form.

19 THE WITNESS: I did not  
20 dissect it to that extent.

21 BY MR. LEVY:

22 Q. I wonder, sir, if you would look at  
23 Exhibit 1, particularly at page 22.

24 A. I have it.

1           Q. Do you notice that Judge Walrath  
2       says there in the heading, D, "Disclosure  
3       does not cure the conflict of interest"?

4           A. I can't find what you are talking  
5       about. Maybe you can point that out. I  
6       see it, yes.

7           Q. Do you see that Judge Walrath's  
8       finding was that a disclosure does not cure  
9       the conflict of interest?

10          A. Correct.

11          Q. Now in light of that, will you agree  
12       with me that, perhaps, one of your  
13       substantial questions as to whether Crowley  
14       should be retained was solely the conflict  
15       of interest as distinguished from a lack of  
16       disclosure?

17                   MR. KIPNES: Objection to  
18       the form of the question.

19                   THE WITNESS: Well, I don't  
20       think that the judge was referring to  
21       retaining Crowley in writing this.

22          BY MR. LEVY:

23          Q. I'm sorry?

24          A. I did not understand that the judge

1       was referring to the retention of  
2       Mr. Crowley when she wrote Section D on  
3       page 22. I didn't think that was the issue  
4       before her. It's important in that  
5       connection to look at footnote 16.

6           Q. I'm sorry?

7           A. It is important in connection with  
8       your question to look at footnote 16 at  
9       page 22.

10          Q. Why is it important, sir?

11          A. Because, I think, in my opinion, it  
12       discloses what the Court was considering  
13       because she says even if the debtors  
14       corporate policy did not require such  
15       disclosure, the Court would expect the  
16       debtor in possession to disclose to the  
17       court and its creditors any agreement which  
18       its senior management might have with its  
19       largest creditors similar to the agreement  
20       at issue here.

21           I think what the judge was  
22       doing, and the footnote was explaining to  
23       the reader further the discussion that she  
24       was having under D; at least, that's my

1 impression.

2 Q. Would you look at page 15 of the  
3 opinion.

4 A. Got it.

5 Q. Note that the judge said "given the  
6 fact that Crowley had not disclosed the  
7 agreement in the first place, the debtor  
8 should have asked for full disclosure and  
9 required that Crowley sever all agreements  
10 with Cereberus as a condition of continued  
11 employment."

12 A. I see it.

13 Q. Did you take that into consideration,  
14 this is, page 15 of the opinion? I have a  
15 different pagination on my copy. Now, I  
16 will show it to you. It's at the bottom of  
17 22 and the top of 21 and the -- the bottom  
18 of 21 and the top of 22.

19 A. Yes, I see it.

20 Q. Was that one of the -- did that  
21 raise a substantial question for you as to  
22 whether he should be retained?

23 A. I think it raised a question. I  
24 don't know whether I would characterize it

1 as substantial. I know I thought about it  
2 and considered it and discussed it.

3 Q. Who did you discuss it with?

4 A. My counsel.

5 Q. Anybody else?

6 MR. KIPNES: We need a  
7 timeframe on that question, Mr. Levy.

8 Ever?

9 BY MR. LEVY:

10 Q. At about the time -- the timeframe  
11 would be from the time you were appointed  
12 and read this opinion, let's say, through  
13 the end of March.

14 A. March of this year?

15 Q. March of the year you were  
16 appointed.

17 A. I was appointed around March 7. For  
18 those 21 days?

19 Q. Right.

20 A. I don't think I discussed it with  
21 anyone, except my counsel. I can't recall  
22 in any event.

23 Q. Was a substantial question as to  
24 whether he should be retained raised in

1 your mind by the fact that the United States  
2 Trustee in the Motion for the Appointment  
3 of a Chapter 11 Trustee had indicated that  
4 Mr. Crowley should be removed?

5 A. We took all of that into  
6 consideration, yes.

7 Q. Were you aware of that?

8 A. I read his, I forget whether it was  
9 the Trustee's letter or motion. I forget  
10 now what the document was, but I was aware  
11 of that.

12 Q. Were you aware, also, that the  
13 noteholders filed a brief in which they  
14 said Mr. Crowley should be removed?

15 A. I read a lot of papers. I can't sit  
16 here now and tell you what I read about a  
17 year ago. I knew that was a very important  
18 question.

19 Q. The question of whether he should be  
20 retained was a very important question?

21 A. To me.

22 Q. To you?

23 A. Yes.

24 Q. And what factors that you have not

1 already mentioned did you take into account  
2 in reaching a conclusion as to whether he  
3 should be retained or not retained?

4 MR. KIPNES: When?

5 THE WITNESS: In March.

6 BY MR. LEVY:

7 Q. In March.

8 A. One of the things I did was,  
9 perhaps -- one of the first things I did  
10 was to arrange to go out and interview  
11 Mr. Crowley, which I did, and interviewed  
12 the senior members of Coram and,  
13 nonetheless, it constituted a very  
14 important question in my judgment.

15 Q. Tell us what happened. Do you  
16 recall about when you visited with  
17 Mr. Crowley for the first time?

18 A. I think the --

19 MR. KIPNES: In person?

20 BY MR. LEVY:

21 Q. In person.

22 A. I think the third week of March.

23 Q. Did you have any discussions with  
24 him on the telephone other than arranging

1       when you were going to meet him prior to  
2       going out to see him?

3           A. Well, I know I had discussions with  
4       him on the telephone.

5           Q. What do you recall about those  
6       discussions?

7           A. Good God, this is still the March  
8       time period.

9           Q. Everything is until I tell you  
10      otherwise.

11          A. I must have said how are things  
12       going? Are the sales holding up? What is  
13       the status of the staff? What is their  
14       morale. Questions along those lines.

15          Q. Did you ask him in that phone call  
16       whether he had severed his relationship  
17       with Cereberus?

18          A. I may have.

19          Q. Do you recall whether you did or  
20       didn't?

21          A. I can't specifically recall that  
22       discussion.

23          Q. Did you make any notes of that  
24       conversation you had on the telephone with

1 him?

2 A. No, I did not.

3 Q. You went out to see him, roughly,  
4 the third week in March?

5 A. Roughly.

6 Q. How much time did you spend  
7 face-to-face with him on that occasion?

8 A. A couple of hours, I guess.

9 Q. What did you talk about?

10 A. Talked about the conflict problem;  
11 told him that I was troubled by it; talked  
12 about the status of the company and what he  
13 considered to be the future possibilities;  
14 talked about his relationship with his  
15 executive staff; talked about the situation  
16 regarding the outlying facilities.

17 Q. The, I'm sorry?

18 A. Outlying facilities other than the  
19 one in Denver. I may be repeating: Talked  
20 about the situation in the industry, the  
21 future of the industry. I think we got  
22 into the question of the claim of the IRS.  
23 I think we got into the question of Coram's  
24 claim against Price-Waterhouse. I think we

1       got into the Arnet litigation very briefly.

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8           Q. Did you ask him whether he was still  
9       getting \$80,000 a month at that time from  
10      Cerberus?

11          A. I don't think I did.

12          Q. Is that a matter not of interest to  
13      you?

14          A. Well, I didn't have a figure of  
15      \$80,000 in my mind. He had told me that he  
16      had terminated his relationship, so there  
17      would be no occasion to say how about the  
18      80,000.

19          Q. You knew about the 80,000 from Judge  
20      Walrath's opinion?

21          A. Correct.

22          Q. When did he tell you he had  
23      terminated his relationship?

24          A. I don't know whether it was during

1 the telephone call or when I was out there.

2 I can't tell you that.

3 Q. And did you -- what was your  
4 understanding of what he meant when he said  
5 terminated?

6 A. That he did not have a contractual  
7 relationship to Cerberus.

8 Q. Meaning that he was not obligated to  
9 perform for them?

10 A. And they were not obligated --  
11 except that he did indicate, I guess, that  
12 they owed him some money. I believe he  
13 said that during the discussion that we  
14 had.

15 Q. Did he say he was not doing any work  
16 for Cerberus at that time?

17 A. He did.

18 Q. Did he say he was not going to do  
19 any work for Cerberus?

20 A. I don't think we talked about the  
21 future with Cerberus. He talked about the  
22 present.

23 Q. Was the future relationship between  
24 Crowley and Cerberus of interest to you at

1       that point in making your decision as to  
2       whether to retain him?

3           A. Yes.

4           Q. Why didn't you ask him?

5           A. There were many things on my mind at  
6       the time. I can't answer that question. I  
7       don't know.

8           Q. You said when -- I made a list of  
9       the things you talked about. You said you  
10      talked about the conflict of interest.

11       What else other than what you just  
12      testified to either in the phone call or in  
13      your meeting in March did you discuss with  
14      Mr. Crowley relating to the subject of  
15      conflict of interest?

16       A. I recall that he said that it was  
17      very unfortunate that this had developed.  
18       It was not done intentionally. If somebody  
19      had asked him, he would have disclosed it.  
20       He thought that it may have been an error  
21      on the part of his counsel. I can't recall  
22      very much more than that.

23       Q. Did you distinguish in that  
24      conversation between two periods, the first

1 period would be the year 2000 leading up to  
2 Judge Walrath's opinion of December 21st,  
3 2000, where there was no disclosure? Do  
4 you recall that?

5 A. Did I distinguish --

6 Q. In the conversation, did either of  
7 you distinguish that?

8 A. I don't think I distinguished that,  
9 no.

10 Q. Are you familiar with the fact that  
11 at the end of December 2000 Judge Walrath  
12 denied confirmation of the first plan  
13 because there was a conflict of interest  
14 which you had had tainted the debtor,  
15 tainted, perhaps, Cerberus?

16 A. Do I remember --

17 MR. GODNICK: Objection to  
18 the characterization of the opinion.

19 THE WITNESS: I remember  
20 reading her opinion. I can't tell you  
21 the exact language. She raised the  
22 question, certainly.

23 BY MR. LEVY:

24 Q. Did she raise the question or was

1       that a basis, to your understanding, of her  
2       finding that there was no good faith with  
3       respect to the first plan?

4           A. I don't think I can, without having  
5       her opinion in front of me, answer  
6       questions of that sort.

7           Q. Would you look at page 7 of Judge  
8       Walrath's 2001 opinion. There is a  
9       paragraph there that begins "At the  
10      conclusion."

11          A. All right.

12          Q. "At the conclusion of the  
13       confirmation hearings, we found that  
14       Crowley's consulting agreement with  
15       Cerberus created an actual conflict of  
16       interest on his part. We further held that  
17       the conflict of interest has tainted the  
18       debtor's restructuring of its debt, the  
19       debtor's negotiations towards the plan,  
20       even the debtor's restructuring of its  
21       operations," and the judge cites to her  
22       early opinion.

23                   Does that refresh your  
24       recollection as to whether you had a

1 discussion with Crowley during March  
2 focusing on the first year's conflict of  
3 interest?

4 A. I don't recall that we divided it  
5 timewise, our discussion. We may have. I  
6 just don't recall.

7 Q. Do you recall, then, discussing the  
8 findings in the second opinion that after a  
9 year nothing had changed?

10 A. I don't recall discussing with  
11 Mr. Crowley a question of findings. He is  
12 not a lawyer. I did not understand that he  
13 would be able to distinguish findings and  
14 conclusions. We covered the subject.

15 Q. Wasn't it of concern to you because  
16 you, of course, understand what findings  
17 are?

18 A. Certainly.

19 Q. That here was an unappealed, final  
20 order, talking about the 2001 opinion now,  
21 that found there was a conflict for a  
22 second time that was there for a finding  
23 that is subject to, perhaps, a collateral  
24 estoppel rule and that you were dealing

1 with a man at that point who the judge said  
2 had a conflict of interest that tainted the  
3 debtor? Did that concern you at that time?

4 MR. KIPNES: Objection to  
5 the form of the question. Go ahead and  
6 answer it. I won't get into a debate  
7 with you as to the misstatement of the  
8 law.

9 MR. MILLER: Objection. It  
10 misstates the opinion.

11 MR. KIPNES: Do you have the  
12 gist of the question?

13 (Question read back.)

14 THE WITNESS: It concerned  
15 me not only at that time, but all  
16 through this proceeding.

17 BY MR. LEVY:

18 Q. Did it concern you as you met  
19 Crowley and talked to him on the phone that  
20 the judge had found in the 2001 opinion  
21 four or five times that she didn't believe  
22 his testimony under oath?

23 A. I did not -- I don't think I  
24 discussed that with him, no.

1 Q. Were you aware of it?

2 A. Of what the opinion said.

3 Q. Were you aware that Judge Walrath  
4 found several times, four or five times,  
5 that his testimony, she simply didn't  
6 believe or that his conclusion was  
7 incredible?

8 A. I can't say whether she found it  
9 four or five times. I know she raised that  
10 question.

11 Q. Would you look at footnote 7 to  
12 Judge Walrath's opinion.

13 A. The question is?

14 Q. Does that refresh your recollection  
15 as to one time when she wouldn't credit his  
16 testimony?

17 MR. GODNICK: Objection. I  
18 don't think the judge's recollection  
19 needs to be refreshed. He indicated --

20 MR. LEVY: Okay, fine.

21 BY MR. LEVY:

22 Q. Can you answer the question?

23 A. Well, that doesn't -- today's  
24 reading doesn't refresh my recollection.

1 That was my impression right from the  
2 beginning that she had a concern about his  
3 testimony on whether he had advised the  
4 directors.

5 Q. Did she, do you recall now, that she  
6 also, and now look at page 15 where the  
7 judge says "Crowley himself demonstrates  
8 the insidious effect of that conflict when  
9 he caused the debtors to pay in cash rather  
10 than notes the 6.3 million dollar interest  
11 payment due to Noteholders immediately  
12 before the bankruptcy filing. Crowley's  
13 explanation that the payment was made to  
14 maintain the Noteholders' support is  
15 unconvincing."

16 MR. KIPNES: What is the  
17 question?

18 BY MR. LEVY:

19 Q. Did the fact that the judge found  
20 his testimony under oath to be  
21 unconvincing, perhaps, give you some  
22 caution as to what he said to you might be  
23 unconvincing?

24 MR. KIPNES: Objection.

1           That is like saying --

2           MR. LEVY: The rule is, you  
3       object to the form. Let's stop with  
4       that.

5   BY MR. LEVY:

6   Q. Would you answer.

7           MR. GODNICK: I would like  
8       to understand the basis.

9           MR. KIPNES: I think taking  
10       a quote out of context misstates what  
11       the judge is saying.

12           MR. LEVY: Did I read it  
13       wrong?

14           MR. KIPNES: No.

15       Unconvincing.

16           MR. LEVY: That's what I  
17       said.

18           MR. KIPNES: Right.

19           THE WITNESS: Absolutely.

20           MR. LEVY: Same page.

21           MR. KIPNES: Can we  
22       eliminate the commentary on the answers  
23       to the questions if I can't comment on  
24       the basis for my objection?

1 MR. LEVY: Hush; be quiet.

2 MR. KIPNES: Don't tell me  
3 to hush.

4 BY MR. LEVY:

5 Q. On the same page, Judge Walrath  
6 found that Crowley's assertion that he  
7 preferred to pay cash rather than add the  
8 amount to the debtors' different structure  
9 is also incredible. Do you see that?

10 A. I see it.

11 Q. Did that give some concern what  
12 Mr. Crowley told you then in March and  
13 anytime after that might be incredible?.

14 MR. GODNICK: Objection to  
15 the form.

16 THE WITNESS: Well, when a  
17 judge says that the explanation is  
18 incredible, I don't think the judge is  
19 quite saying that the person asserting  
20 it is not telling the truth. Maybe  
21 that's true. I think what the judge may  
22 be saying is that that is not a  
23 satisfactory explanation; and you and I  
24 know in the course of oral argument, a

1       judge will say to the attorney "I think  
2       that explanation to my question is not a  
3       credible explanation." The judge is not  
4       saying to the attorney "I think you are  
5       lying." He is saying it's not very  
6       convincing.

7       BY MR. LEVY:

8           Q. How about on the same page where she  
9       says in commenting on some testimony, "We  
10       quite simply do not believe that this --"  
11       do you see that?"

12       A. I read that.

13       Q. Is that a suggestion that he was not  
14       telling the truth?

15       A. When I read this opinion and when I  
16       saw Mr. Crowley, I knew that I had to be  
17       careful in talking with him and evaluating  
18       his answers to questions that I posed.

19       Q. Why?

20       A. Because of what the judge had  
21       written.

22       Q. Because that lead you to what  
23       conclusion, that you couldn't believe him?

24       A. Not necessarily. Because I like to

1 give people the benefit of the doubt. It's  
2 that -- given the statement of a federal,  
3 official bankruptcy judge who expressed  
4 concern that caused me to take that into  
5 very serious consideration.

6 Q. And did you continue to take that  
7 into serious consideration?

8 A. I did.

9 Q. And do you to this day?

10 A. I do.

11 Q. Do you think Mr. Crowley is an  
12 honest man?

13 A. I do. When you say "honest," did he  
14 ever do something that may have been  
15 improper? I think he did. This is an  
16 instance of it. Do I think that he lied to  
17 me since I have known him? I have no  
18 occasion to believe that. I don't think  
19 that anything he has told me thus far  
20 represents a lie. Do I agree with  
21 everything he has said? Of course not. He  
22 is a salesman. He is an executive and he  
23 does what salesmen, lawyers, doctors,  
24 housewives, anybody else does. Sometimes

1 he exaggerates. He sometimes puts his own  
2 spin on an issue. That doesn't quite get  
3 into the area, as far as I'm concerned, of  
4 credibility, but it might as far as you are  
5 concerned. I can't speak for you.

6 Q. Did the fact he filed an affidavit  
7 in the Bankruptcy Court in which he said he  
8 was receiving no compensation from Cerberus  
9 for work on Coram cause you any concern in  
10 light of Judge Walrath's finding, not  
11 statement, but finding that, in fact, she  
12 didn't believe that statement?

13 A. Well, I think, we are really  
14 repeating now what you have been asking me.  
15 I have given you my best answer.

16 Q. I was asking you a question now  
17 about the affidavit. The others were about  
18 what she said.

19 A. Yes. I tried to make it clear in  
20 answer to your various questions that I was  
21 concerned, yes.

22 Q. Did you consider the fact that that  
23 by itself was perjury in bankruptcy fraud?

24 MR. KIPNES: Objection to

1           the form of the question.

2                         THE WITNESS: No, I did not.

3       BY MR. LEVY:

4       Q. Do you think you should have?

5       A. Did I independently say now that  
6       must be perjury? No, I did not say that.

7       Q. I said did you consider it?

8       A. Yes, of course.

9       Q. And you came to what conclusion as  
10      to when you considered whether that was  
11      perjury or bankruptcy fraud? What  
12      conclusion did you come to?

13      A. I came to the conclusion that we had  
14      to be very, very careful in handling  
15      Mr. Crowley.

16      Q. With respect -- that is not  
17      responsive. What conclusion did you come  
18      to as to whether that was bankruptcy fraud  
19      or perjury?

20                     MR. KIPNES: Asked and  
21      answered. It hasn't been answered. Do  
22      you want to go back about four  
23      questions?

24                     THE WITNESS: I don't think

1           I can add anything to what I have said  
2           on this.

3                   MR. LEVY: I would like to,  
4               if you can find it -- I really don't  
5               believe it was answered.

6                   MR. KIPNES: He said he did  
7               not independently look at them.

8 BY MR. LEVY:

9                   Q. Did you consider -- think you said  
10          you did consider whether that was fraud,  
11          whether that was bankruptcy fraud or  
12          perjury, didn't you?

13                  A. I did not consider in a discrete  
14          fashion that that specific point was  
15          different from my other evaluation of  
16          Mr. Crowley. If I said that to you, I  
17          would be misstating my statement of mind.  
18          That was not my state of mind. Let me add  
19          that in approaching Mr. Crowley, I had, as  
20          a backdrop of my discussions, the fact that  
21          the judge had raised very substantial  
22          questions. My main concern in taking over  
23          this assignment was to get this company out  
24          of bankruptcy as quickly as I could. That

1 was foremost in my mind.

2                   What your questions are  
3                   doing today is making the item of  
4                   Mr. Crowley's credibility the foremost  
5                   consideration. I have to tell you it was  
6                   not the foremost consideration that I had  
7                   in preparing him in approaching my job. I  
8                   sought that my main responsibility was to  
9                   the Court and to the creditors, to the  
10                  equity people, to maximize the assets,  
11                  minimize the liabilities and to do it as  
12                  promptly as I could and that I was not  
13                  there as a prosecutor or in that type of  
14                  role. Maybe I should have been. I did not  
15                  perceive my job as such.

16                  My discussions with the  
17                  bankruptcy Trustee did not indicate that.  
18                  When I had my interviews, that was not a  
19                  major issue. As a matter of fact, it was  
20                  not even discussed with the United States  
21                  Trustee. The Trustee emphasized that there  
22                  were two factions opposed to each other and  
23                  that the reason that the Trustee had  
24                  recommended me was because of the

1 outstanding job I had done in New Era in  
2 reconciling two factions or various  
3 factions; and that was primarily the guide  
4 that I used in approaching this matter.

5 Now, based on your  
6 questions, perhaps, I should have said that  
7 the main job that I had was to evaluate the  
8 credibility of Mr. Crowley. You may be  
9 right, but I did not perceive it that way.

10 Q. Did you believe --

11 A. When you came in to see me shortly  
12 after my appointment, you did not emphasize  
13 this credibility point. That's my  
14 recollection. You were very friendly and  
15 you talked about the necessity of maximizing  
16 the return to equity. You told me that  
17 there was tension between the equity  
18 position and the Noteholders and you led me  
19 to believe that I had to use my intelligence  
20 and my experience in trying to resolve that  
21 tension and to do it as promptly as  
22 possible. Maybe I misunderstood what you  
23 were talking about. I don't think so. We  
24 had a very cordial meeting, as you will

1 recall. In the meeting, and I do not have  
2 any recollection of your emphasis on the  
3 credibility of Mr. Crowley.

4 Q. That meeting was accompanied by  
5 Mr. Liebentritt on March 15?

6 A. Yes.

7 Q. Isn't it true that we spent a lot of  
8 time at that meeting discussing the claim  
9 and potential RICO claim that the Equity  
10 Committee believed it had against Crowley  
11 and the Noteholders and the fact that there  
12 was evidenced in a motion that the Equity  
13 Committee had filed some months before  
14 seeking leave to file it? Do you remember  
15 that discussion?

16 MR. KIPNES: I think that is  
17 beyond the scope. I will let him  
18 answer.

19 MR. NEUWIRTH: Objection to  
20 the form.

21 THE WITNESS: I remembered  
22 that you or Mr. Liebentritt mentioned  
23 that in passing. There was no lengthy  
24 discussion about that subject, no.

1 BY MR. LEVY:

2 Q. If Mr. Liebentritt were to testify  
3 that he recalls specifically saying you  
4 must remove Crowley, would you say he was  
5 incorrect or simply that you have no  
6 recollection?

7 A. I don't think he used any such  
8 expression with me. I think he said in  
9 passing, "you ought to think about removing  
10 Mr. Crowley."

11 Q. You do recall, of course, that on  
12 many subsequent occasions the Equity  
13 Committee asked you to remove Mr. Crowley?

14 A. I don't know whether I would say  
15 many subsequent occasions. On subsequent  
16 occasions I do recall that.

17 Q. Let's get back to your statement  
18 about what you understood your purpose was  
19 to be. Let me ask you this: Immediately  
20 after reading the opinion, which you did, I  
21 think the time records show for 2.6 hours,  
22 re-read opinion, right after March 7, did  
23 you believe that Crowley at that time had a  
24 conflict of interest?

1           A. At that particular moment?

2           Q. Yes. Based on reading Judge

3       Walrath's opinion before you talked to

4       Crowley.

5           A. I don't know whether I could use the  
6       word did I believe. I thought it was a  
7       problem. I don't think I had a belief.

8           Q. Judge Walrath had found in her  
9       opinion, didn't she, she had found that  
10      Crowley had a conflict of interest?

11          A. Correct.

12          Q. Now, it's March 7 or 8 or 9, you  
13       read the opinion, you have not talked to  
14       Crowley. Did you have any reason to  
15       question Judge Walrath's finding that  
16       Crowley had a conflict of interest?

17          A. I didn't question it, no.

18          Q. Okay. Would it be fair to say, at  
19       least at that point, that he had a conflict  
20       of interest?

21                    MR. GODNICK: Is the  
22       question whether as of March 7, that is  
23       the date that you referenced, a conflict  
24       existed or, rather, back in December at

1           the point --

2                   MR. LEVY: March 7.

3                   MR. GODNICK: -- when the  
4                 judge wrote her opinion that a conflict  
5                 existed?

6                   MR. LEVY: When the judge  
7                 wrote the opinion March 7, 8 and 9  
8                 whether she believed there was a  
9                 conflict of interest. I think he said  
10                yes.

11                  MR. GODNICK: As of that  
12                 date?

13                  MR. LEVY: Yes.

14                  THE WITNESS: I didn't form  
15                 that intent. I didn't form that mens  
16                 rea at that point.

17          BY MR. LEVY:

18          Q. You did not?

19          A. No. I think the mens rea that I  
20                 formed was, Judge Adams, there is a problem  
21                 here, you have to explore it. I didn't  
22                 know whether he had resolved it. I didn't  
23                 know what was going on. I had just been  
24                 appointed. The Trustee in bankruptcy or --

1 there were two trustees at the meeting.  
2 They had emphasized something different  
3 with me: The necessity of reconciling  
4 varying interests and to do it very  
5 promptly and to get on the job, so I  
6 didn't, I began forming beliefs. That just  
7 is not what I was thinking of doing at the  
8 time. I would mislead you if I told you  
9 otherwise.

10 Q. It says at the bottom of page 13 of  
11 the opinion, last sentence, "This is an  
12 actual conflict of interest as we concluded  
13 at the first confirmation hearing."

14 You understood that to be  
15 Judge Walrath's finding?

16 A. Yes.

17 Q. You had no reason to doubt at this  
18 time, at that point?

19 A. No, I did not. I don't doubt it  
20 now.

21 Q. You don't doubt it now. You think  
22 he has got a conflict of interest now?

23 A. No. As of the time she wrote it, I  
24 think she was correct, absolutely. I did

1 not know what the situation was on March 7  
2 or when I met you and Don Liebentritt. How  
3 could I have known it? I was just  
4 appointed. I just read these opinions and  
5 I know you have a very high regard for me,  
6 but I can assure you I don't have that type  
7 of ability.

8 Q. I do have a high regard for you.

9 When did, in your view, the  
10 conflict of interest that you thought he  
11 had, when did it go away? When did it stop  
12 being a conflict of interest?

13 MR. GODNICK: Objection to  
14 the mischaracterization of the witness's  
15 prior response. He didn't believe --  
16 as of March 7, he believed a conflict of  
17 interest existed. He testified that in  
18 December at the point in time that Judge  
19 Walrath wrote her opinion there existed  
20 a conflict of interest.

21 THE WITNESS: I thought it  
22 was dissipated when I went out and  
23 talked to Dan Crowley.

24 BY MR. LEVY:

1 Q. What did he say to you that  
2 dissipated that conflict?

3           A. I thought he told me that he had  
4       terminated all contractual arrangements  
5       with Cerberus; that the only thing that  
6       remained was his claim against them for  
7       large sums of money. I really didn't  
8       address that. It was none of my concern.

9 Q. When he told you that, Mr. Adams,  
10 did he show you any documents?

11 A. No.

12 Q. Did you ask him how he went about  
13 terminating his relationship with Cerberus?

14           A. I don't recall doing that. But I do  
15       recall when I came back to Philadelphia, I  
16       discussed this matter at considerable  
17       length with Mr. Bressler, my counsel.

18 Q. In order to get what kind of advice  
19 from him?

20 A. What kind of advice did he give me?

21 MR. KIPNES: No.

22 BY MR. LEVY:

23 Q. What kind of advice were you trying  
24 to get from him?

1                   MR. KIPNES: I will help  
2        you, Richard. Don't -- then, I will  
3        instruct him not to answer when you ask  
4        him the question.

5                   THE WITNESS: Give me that  
6        question.

7                   MR. KIPNES: What kind of  
8        legal advice were you seeking?

9        BY MR. LEVY:

10      Q. I said what kind of advice were you  
11     seeking from him?

12      MR. KIPNES: You are  
13     correct, I'm sorry.

14      THE WITNESS: I was seeking  
15     his guidance as to what to do in this  
16     situation. He was very well aware of  
17     the opinion. He discussed it with me a  
18     number of times. I told him of my  
19     meeting in Denver. And the question was  
20     should we terminate the contract at that  
21     time? That's my best recollection. I  
22     would have to talk to him, but. . .

23       BY MR. LEVY:

24      Q. Were you asking for his business

1 advice as to whether this was a good or bad  
2 thing to do in part, at least?

3 A. I believe in part, yes. In part.

4 Q. What did he say in the part where  
5 you were seeking his business advice?

6 A. My recollection is that Barry  
7 Bressler said this is a matter we have to  
8 keep very much in mind. As we go forward,  
9 it's one of the factors that you will have  
10 to weigh in whether you want to go forward  
11 with Dan Crowley.

12 Q. Did you at or about that time -- did  
13 Mr. Bressler tell you you ought to see the  
14 documents that evidence the termination, if  
15 there were any?

16 A. I can't recall that he said that. I  
17 assume that he had reviewed the documents.

18 Q. What documents?

19 A. Whatever documents there may be.

20 Q. Are you aware that there were any  
21 documents at that time or were you then  
22 aware that there were documents that  
23 terminated the relationship?

24 A. I can't say. I can't recall that.